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THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Pursell Technologies, Inc.

Serial No. 75916274

Theodore A. Breiner of Breiner & Breiner, L.L.C. for
Pursell Technologies, Inc.

Yong Oh (Richard) Kim, Trademark Examining Attorney, Law
Office 115 (Tomas Vlcek, Managing Attorney).

Before Simms, Cissel and Hairston, Administrative Trademark
Judges.

Opinion by Hairston, Administrative Trademark Judge:

On February 10, 2000 Pursell Technologies, Inc. filed
an intent-to-use application to register the mark FARMLINKS
for services identified as "golf club services."

The Trademark Examining Attorney refused registration
of applicant's mark under Section 2(d) of the Trademark
Act, 15 U.S.C. §1052(d), in view of the mark THE FARM which

is previously registered for "recreational services, namely golf and country club services."¹

Applicant argued against the refusal to register and sought to amend the recitation of services to "golf club services for the public and to showcase fertilizer products." The Examining Attorney was not persuaded by applicant's arguments with respect to the refusal to register under Section 2(d). In addition, the Examining Attorney held that the proposed amendment to the recitation of services was unacceptable because it is beyond the scope of the original recitation of services.

When the Examining Attorney made final the refusal to register under Section 2(d) and further declined to accept applicant's proposed amendment to the recitation of services, applicant appealed. Briefs have been filed and an oral hearing was held.

Considering first applicant's proposed amendment to the recitation of services, Trademark Rule 2.71(a) states that "[t]he applicant may amend the application to

¹ Registration No. 1,547,559 issued July 11, 1989; Section 8 affidavit accepted; Section 15 affidavit received. The registration also covers "golf bags and golf balls." Registration was not refused on the basis of these goods.

clarify or limit, but not broaden, the identification of goods and/or services." Applicant argues that its proposed amendment is "clearly a narrowing amendment." (Reply brief, p. 3). If applicant's proposed amendment were simply "golf club services for the public," this would be acceptable because it clarifies that the services are for the public and that they are not in the nature of a private club. However, we disagree with applicant that the addition of the language "to showcase fertilizer products" narrows the recitation of services. On the contrary, such language clearly broadens the scope of the original recitation of services because "to showcase fertilizer products" is an entirely different activity from golf club services.

In view thereof, we agree with the Examining Attorney that applicant's proposed amendment to the recitation of services is unacceptable.

We turn next to the issue of likelihood of confusion. Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the

similarities between the marks and the similarities between the goods and/or services. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Considering first the services of applicant and registrant, applicant argues that the services are different in nature because applicant's services will be in the nature of a public golf course, whereas registrant's services are in the nature of a golf and country club requiring private memberships. The problem with applicant's argument is that registrant's services are not limited in the way applicant suggests. We must consider registrant's services as they are described in the registration and we cannot read limitations into those services. See *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1987); *Canadian Imperial Bank of Commerce v. Wells Fargo Bank, N.A.*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); and *In re Elbaum*, 211 USPQ 639 (TTAB 1981). When we consider registrant's services as they are described in the registration, we find that they are broadly described such that they would include a public golf course. In any event, there is no evidence of record to establish that a golf course, which is part of a country club, is

necessarily private, i.e., a membership is required and it is not open to the public. In short, we find that applicant's and registrant's services are legally identical, and that they would be offered to the same class of purchasers, namely persons who play golf.

We turn next to a consideration of the marks, keeping in mind the well-established principle that when marks would appear on identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ 1698, 1700 (Fed. Cir. 1992). Also, to determine whether applicant's mark and the registered mark, when considered in their entirety, are similar in sound, appearance, connotation and commercial impression, the test is not whether the marks can be distinguished when subjected to a side-by-side comparison. Rather, the question is whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion as to the source of the goods or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore,

although the marks at issue must be considered in their entirety, it is well settled that one feature of a mark may be more significant than another feature, and it is not improper to give weight to the dominant feature in determining the commercial impression created by the mark. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). For instance, according to the court, "that a particular feature is descriptive . . . with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark . . ." Id.

In registrant's mark, THE FARM, the word FARM is clearly the dominant feature because the word THE has no source-indicating significance. In applicant's mark, FARMLINKS, the word FARM is also the dominant element. The Examining Attorney has made of record an excerpt from the American Heritage Dictionary of the English Language (3rd ed. 1992) wherein "links" is defined as: 1. *Sports*. A golf course. In view of this definition, the term "links" is highly descriptive, if not generic, of applicant's services. Considering the marks THE FARM and FARMLINKS in their entirety, we find that they are substantially similar in their overall commercial impressions. Purchasers may well believe that, due to the shared term

FARM, the golf club services offered by applicant under the mark FARMLINKS represent a new golf course from the same source as THE FARM golf club services.

Applicant contends that marks containing the word FARM are weak marks and thus are entitled to a limited scope of protection. Applicant points to Registration No. 2,466,349 for the mark THE OLDE FARM for "recreational services, namely golf club services." It is well settled that third-party registrations, by themselves, are entitled to little weight on the question of likelihood of confusion because they are not evidence of what happens in the marketplace or that the public is familiar with the use of those marks. Third-party registrations may not be used to justify the registration of another confusingly similar mark. In this case, this single third-party registration hardly demonstrates that marks containing the word FARM are weak. Also, a review of the evidence submitted by applicant in connection with this registration shows that the owner of the registration obtained a consent to register from the owner of the cited registration herein.

Applicant also argues that golfers are knowledgeable about golf club services and are selective and careful in their purchasing decisions. However, there is no evidence to support this conclusion. In any event, we are not

persuaded that golfers are so knowledgeable or careful that they would be immune to source confusion arising from the use of these confusingly similar marks in connection with identical services.

In addition, applicant points to the lack of evidence of any actual confusion. This is hardly surprising since applicant's application is an intent-to-use application and there is no indication that applicant has begun use of its mark other than in promotional materials. We note that applicant stated that its golf course was scheduled to open in 2003. While the absence of any instances of actual confusion over a significant period of time is indeed a du Pont factor, it is a meaningful factor only where the record demonstrates appreciable and continuous use by the applicant of its mark in the same markets as those served by registrant under its mark. In particular, there must be evidence showing that there has been an opportunity for incidents of actual confusion to occur.

Finally, applicant's contention that the registered mark is not famous does not alter our conclusion that confusion is likely. It would indeed be unlikely that evidence establishing the fame of the registrant's mark would be available to an Examining Attorney for submission in support of the refusal to register. Suffice it to say

that such evidence is not necessary in order to find confusion likely.

In view of the substantial similarity in the marks, the identity of the services and class of purchasers, we find that there is a likelihood that purchasers would be confused when applicant uses the mark FARMLINKS for golf club services in view of the previously registered mark THE FARM for recreational services, namely golf and country club services.

Decision: The Examining Attorney's refusal to register under Section 2(d) is affirmed; and the refusal to accept applicant's proposed amendment to the recitation of services is affirmed.